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No. 88-2031

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA,
Petitioner,

v.

MARSHA B. KOKINDA and KEVIN E. PEARL,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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SUPPLEMENTAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

ARGUMENT 1

PETITIONER'S CONTENTION THAT POST OFFICE PREMISES ARE DEDICATED STRICTLY TO POSTAL USES HAS BEEN FINALLY AND UTTERLY REFUTED BY PETITIONER'S DECISION TO OPEN ITS PREMISES FOR NON-POSTAL, COMMERCIAL USES 1

CONCLUSION 5

APPENDICES:

Appendix A—United States Postal News General Release No. 8 (Feb. 15, 1990) A-1

Appendix B—United States Postal Service Information Package Entitled "One-Stop Customer Convenience" B-1

Information Package Cover B-1

"Consider The Following" B-2

"Postal Retail Lobby Sales" B-3

"We Offer" B-4

"One-Stop Customer Convenience" B-5

Photograph of man using ATM in post office lobby B-6

Directory of United States Postal Service Division Offices, provided in package to assist interested parties in obtaining additional information on placing ATMs in post office lobbies B-7

TABLE OF AUTHORITIES

RULES:

Supreme Court Rule 25.5 1

MISCELLANEOUS:

XIV BANK LETTER (No. 6) 1 5

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SUPPLEMENTAL BRIEF OF RESPONDENTS

Pursuant to Supreme Court Rule 25.5, the Respondents wish to call the attention of the Court to a significant intervening matter that was not available in time to be included in the Brief for Respondents.

ARGUMENT

PETITIONER'S CONTENTION THAT POST OFFICE PREMISES ARE DEDICATED STRICTLY TO POSTAL USES HAS BEEN FINALLY AND UTTERLY REFUTED BY PETITIONER'S DECISION TO OPEN ITS PREMISES FOR NON-POSTAL, COMMERCIAL USES.

The United States Postal Service desires automated teller machines (ATM's) to be placed in post office lobbies throughout the United States, according to an announce-

ment made by the Service on February 15, 1990. *See* "Coming Soon: Automatic Teller Machines in Postal Lobbies," Postal News Release (General Release No. 8, Feb. 15, 1990) (reproduced in Appendix A).

Reproduced at Appendix B is a United States Postal Service informational package released in conjunction with its announcement of the planned placement of ATMs in post office lobbies around the nation. Touting its ATM plan, the United States Postal Service has emphasized:

—its "continued growth in total retail lobby sales." Appendix B-2, "Consider The Following";

—eleven billion dollars in total retail lobby sales in 1989, an increase of nearly four billion dollars over the total retail lobby sales for 1983. Appendix B-3, "Postal Retail Lobby Sales";

—"1.5 billion lobby transactions annually" in post offices. Appendix B-2, "Consider The Following";

—"a member of nearly every household in America visits a postal lobby every month". *Id.*

—"6 million customers are served in our lobbies daily." *Id.*

—"market research shows a significant portion of these customers want the personal touch offered by conducting business in our lobbies." *Id.*

—"customers want the convenience of one-stop shopping." *Id.*

Besides these attractive advantages of its facilities, the Postal Service vaunts the advantages of placing ATMs in its facilities for the following reasons:

—"over 40,000 retail outlets nationwide." Appendix B-4, "We Offer";

—"convenient locations-residential and business areas." *Id.*

—"secure lobbies." *Id.*

—"heavy customer lobby traffic." *Id.*

—"most locations have 24-hour access." *Id.*

—"opportunity to expand your [the bank's] sites for automatic teller machines." *Id.*

—"one-stop customer convenience." *Id.*

Gordon C. Morison, Assistant Postmaster General for Philatelic and Retail Services, attributes the planned introduction of ATMs to the Postal Service's desire to enhance "[c]ustomer convenience [which] has become the driving force of the Service's retail strategy." Appendix A. The Postal Service could not make its message more clear: the desires to enhance customer convenience through one-stop shopping and to generate additional revenue compel it to open its facilities for a variety of non-postal uses, including:

—telefacsimile (fax) communications. Appendix B-5, "One-Stop Customer Convenience"; and

—voice mail, paging and telephone messaging services. *Id.*

These new revelations refute completely Petitioner's contention that "the property acquired by the Postal Service as a site for its postal facilities has been designed exclusively for the conduct of specific government business—the expeditious deposit, processing, sorting, receipt, and delivery of the mails—and has been devoted to that purpose." Pet. Br. 22. Rather than that very narrow, postal use purpose, the ATM program announced by the United States Postal Service demonstrates that the Service will open its facilities for unrelated commercial activities in accordance with its desire "to generate additional revenue and provide one-stop customer convenience." Appendix B-5, "One-Stop Customer Convenience."

Particularly inapposite is Petitioner's argument that post office sidewalks exist "for the sole and exclusive purpose of ingress and egress to * * * the Post Office." Pet. Br. 25 n.7. Under the recently announced ATM program, and other new programs offering commercial, nonpostal services such as voice mail, paging, message services and telefacsimile communication, post office lobbies are wide open for a variety of unrelated commercial ventures. Thus, post office sidewalks, including the one at issue herein, no longer exist for a sole or exclusive purpose. These sidewalks exist to serve numerous nonpostal goals, including banking activities conducted in post office lobbies under the ATM program.

In the light of the United States Postal Service's decision to engage in nonpostal joint ventures, Petitioner's assertion that "[p]ost office walkways linking postal facilities to off-street parking lots entirely on Postal Service property are built for one purpose only: to provide a passageway for person going from their cars to the post office to conduct postal business[,]" Pet. Reply Br. 9, falls short of the mark. Now such walkways exist for a multiplicity of nonpostal business and private purposes, including banking, business and personal communications by voice mail, paging and message services, and transmission of an uncountable variety of documents by telefacsimile. None of these activities has an inherently postal nature. The availability of such nonpostal commercial ventures in post offices around the nation reflects the Service's judgments regarding customer convenience and revenue enhancement.

Electronic banking, a form of commercial solicitation completely unrelated to the provision of postal services, is just the Postal Service's latest effort to enhance customer convenience. As Assistant Postmaster Gordon C. Morison stated "This month ATMs are in the spotlight. We think [our facsimile and ATM] programs demonstrate[] our firm commitment to making it convenient

for our customers to do business with us." Appendix A. The invitation to the public by the Postal Service is not merely "to come to the [post office] to do [postal] business," Pet. Br. 28. Rather, the invitation is to come to the post office to do postal business, or banking business, or, indeed, any kind of business that requires one of the services now being made available in post office lobbies around the nation. It would be disingenuous for Petitioner to further belabor any argument that the postal service has obtained and retained its post office properties exclusively for postal uses or purposes.

The contention that post office sidewalks are open to the general public "for any purpose or for no particular purpose at all," and that "people are free to come and go" as they please, Resp. Br. at 14, can no longer be refuted. There is, perhaps, no better way to describe the significance of the United States Postal Service's decision to allow completely unrelated commercial activity, not merely on post office sidewalks but right in post office lobbies, than the ebullient view expressed by one postal service spokesperson, "[g]iven our conservative history with respect to allowing anything to be placed in our lobbies, it's akin to the changes taking place in Eastern Europe." XIV BANK LETTER (No. 6) 1 (Feb. 12, 1990).

CONCLUSION

For the foregoing reasons, and for the reasons set forth in respondents' main brief, this Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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February 22, 1990

APPENDICES

APPENDIX A

POSTAL NEWS
UNITED STATES POSTAL SERVICE Washington DC 20260-3100

FOR IMMEDIATE RELEASE
ART SHEALY
(202) 268-2783
General Release No. 8

COMING SOON: AUTOMATIC TELLER MACHINES IN POSTAL LOBBIES

WASHINGTON, DC (Feb. 15, 1990)—Self-service automatic teller machines, now found at banks and various retail outlets all across America, will soon be coming to post offices.

"It is now possible for postal officials and local bankers to form new business partnerships through automatic teller machines," says Gordon C. Morison, Assistant Postmaster General for Philatelic and Retail Services at postal headquarters in Washington.

Morison believes bankers will find it very profitable to locate their automatic teller machines in many of the nation's 40,000 postal lobbies, where nearly six million walk-in customers conduct their cash transactions each business day.

"We entered into an agreement in the fall of 1988 with Seafirst Bank in Seattle to install ten of their ATMs in our lobbies on a test basis, and we've found that the number of transactions each month is steadily on the upswing, Morison said. "We're very optimistic that ATMs in our lobbies will be good for our mutual customers, our banking industry partners and the Postal Service."

And, according to Morison, selected ATMs will dispense specially designed "sheetlets" of 12 self-adhesive postage stamps, precisely the size of a unit of paper currency. The new stamp sheetlets debut in early May and will undergo testing before they are distributed nationally.

"Customer convenience has become the driving force in our retail strategy," Morison said. "Last month we announced the extension of a pilot facsimile program to an additional 209 locations across the nation. This month ATMs are in the spotlight. We think each of these programs demonstrates our firm commitment to making it convenient for our customers to do business with us."

APPENDIX B

ONE-STOP CUSTOMER CONVENIENCE

[Postal Services Cash Dispensing Logo]

The Postal Service
Offers You The Opportunity
To Place Your ATMs
In Our Retail Lobbies

[Emblem]

United States Postal Service

B-2

[Postal Services Cash Dispensing Logo]

CONSIDER THE FOLLOWING:

• OUR CONTINUED GROWTH IN TOTAL RETAIL LOBBY SALES
(Graphically Illustrated on the Enclosed Chart)

• 1.5 BILLION LOBBY TRANSACTIONS ANNUALLY

• A MEMBER OF NEARLY EVERY HOUSEHOLD IN AMERICA VISITS A POSTAL LOBBY EVERY MONTH

• 6 MILLION CUSTOMERS ARE SERVED IN OUR LOBBIES DAILY

• MARKET RESEARCH SHOWS A SIGNIFICANT PORTION OF THESE CUSTOMERS WANT THE PERSONAL TOUCH OFFERED BY CONDUCTING BUSINESS IN OUR LOBBIES

• CUSTOMERS WANT THE CONVENIENCE OF ONE-STOP SHOPPING

• MANY COME TO THE POST OFFICE TO MAIL PACKAGES AND CONDUCT OTHER HIGH REVENUE TRANSACTIONS

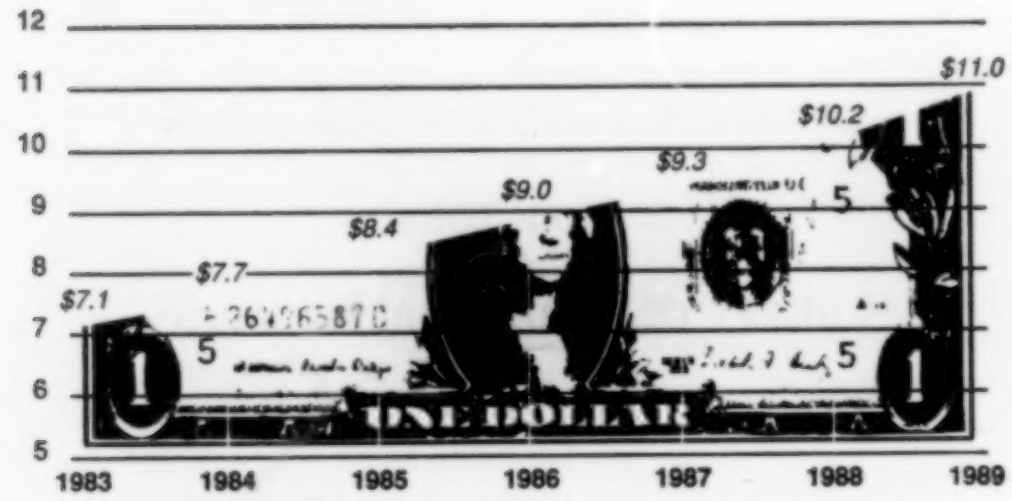
• MORE THAN 800,000 EMPLOYEES

B-3

[Postal Services Cash Dispensing Logo]

POSTAL RETAIL LOBBY SALES

IN BILLIONS OF DOLLARS



[Postal Services Cash Dispensing Logo]

WE OFFER:

• OVER 40,000 RENTAL OUTLETS NATIONWIDE

• CONVENIENT LOCATIONS—
RESIDENTIAL AND BUSINESS AREAS

• SECURE LOBBIES

• HEAVY CUSTOMER LOBBY TRAFFIC

• MOST LOCATIONS HAVE 24-HOUR ACCESS

• OPPORTUNITY TO EXPAND YOUR SITES FOR
AUTOMATIC TELLER MACHINES

• ONE-STOP CUSTOMER CONVENIENCE

ONE-STOP CUSTOMER CONVENIENCE

In addition to the placement of ATMs in Postal Service lobbies, we are entering into a number of programs to generate additional revenue and provide one-stop customer convenience. Market Research shows that a member of nearly every household in America visits a postal lobby every month. A significant number of these customers are considered lobby loyal—they want the personal touch. Many want one-stop shopping.

To take advantage of our 40,000 locations nationwide, we developed several programs which allow private sector entities to place equipment in our lobbies in return for rental and transaction fees or a percentage of total revenues:

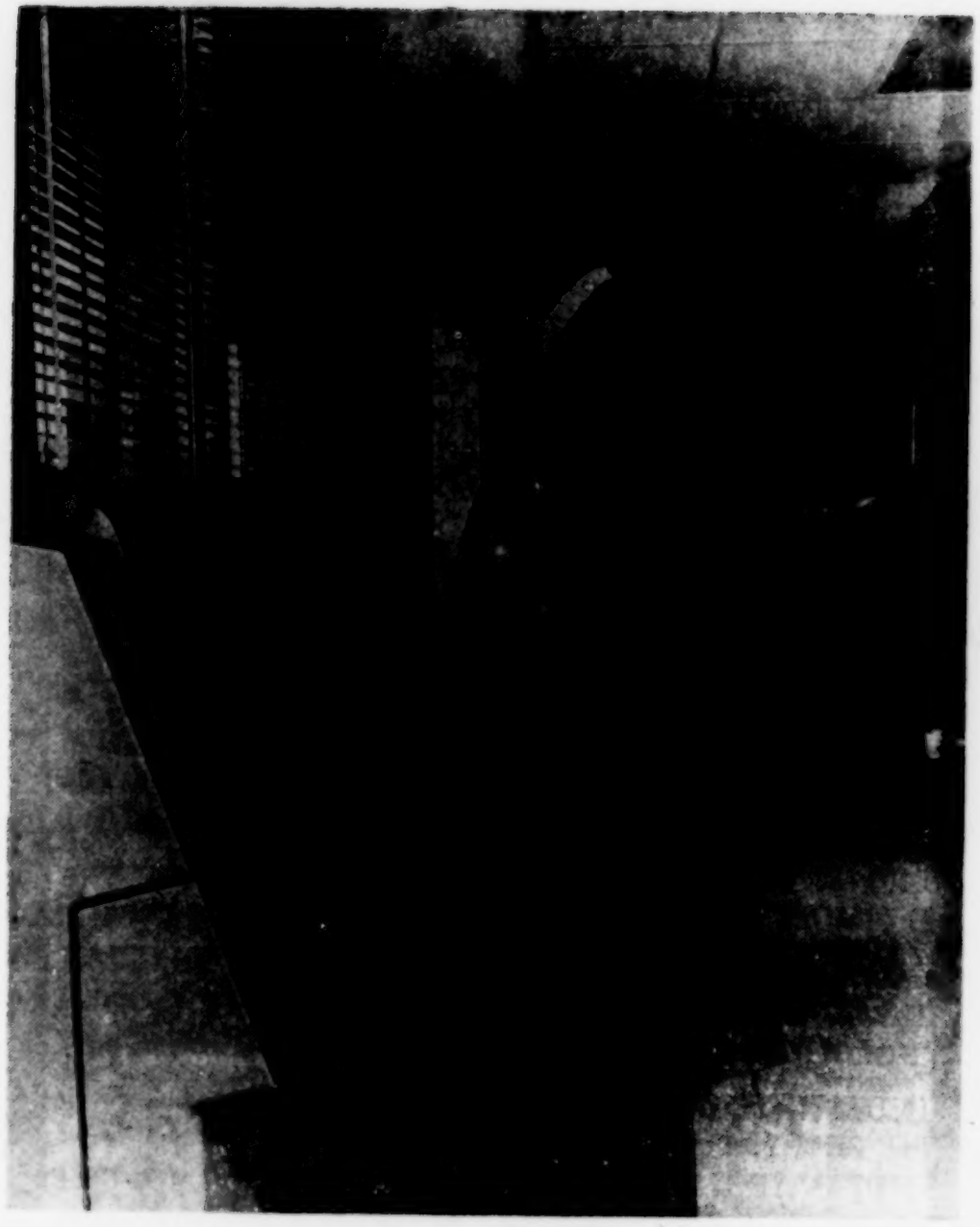
- *FAX TERMINALS*: We awarded a contract to Hotelecopy in Miami, Florida, for a pilot operation of credit card operated FAX equipment. The terminals will be placed in over 260 postal locations and many will be available 24 hours per day.
- *POSTAL BUDDY*: An electronic change of address system that will be demonstrated this fall. While in our lobby, the customer will enter the new information—publishers and direct mailers will pay a fee for that information.
- *VOICE MAIL SERVICE*: A joint venture with a firm offer voice mail and telephone messaging services in postal lobbies. For a low cost, flat rate, the contractor will provide a basic telephone messaging service as well as other services (e.g., paging) at additional cost.

We also provide alternate channels of distribution for customer convenience at non-postal locations. Some of these channels are:

- *SELF-SERVICE VENDING MACHINES*: Offer a full range of postal products and are located in shop-

ping malls, airports, subways and other high traffic locations.

- *STAMPS ON CONSIGNMENT*: Supermarkets, convenience chain stores, drug stores and card shops sell stamps to customers at face value.
- *STAMPS BY MAIL*: Customers fill out an order form—the stamps are delivered within three days.
- *STAMPS BY PHONE*: Customers order stamps through an 800 number using their credit card—the stamps are delivered within five days.
- *CONTRACT POSTAL UNITS*: Full-service retail outlets operated under contract with the Postal Service. These units are located in shopping malls, drug stores, grocery stores, card and gift shops, colleges and universities, military bases, hospitals and institutions.



[Postal Services Cash Dispensing Logo]

FOR ADDITIONAL INFORMATION ON PLACING ATMs IN POSTAL SERVICE LOBBIES, YOU MAY CONTACT THE *FIELD DIRECTOR, MARKETING AND COMMUNICATIONS* IN THE FOLLOWING DIVISION OFFICES SERVING YOUR AREA:

DIVISION	*TELEPHONE NO.*
CENTRAL REGION	
CHICAGO DIVISION 433 W VAN BUREN ST CHICAGO IL 60607-9998	312/765-3034
DENVER DIVISION 1823 STOUT ST RM 413 DENVER CO 80266-9998	303/297-6112
DES MOINES DIVISION 1165 SECOND AVE DES MOINES IA 50318-9998	515/283-7593
DETROIT DIVISION 1401 W FORT ST DETROIT MI 48222-9998	313/226-8634
GRAND RAPIDS DIVISION 225 MICHIGAN ST NW GRAND RAPIDS MI 49599-9999	616/776-6158
INDIANAPOLIS DIVISION PO BOX 9998 INDIANAPOLIS IN 46206-9998	317/464-6452
KANSAS CITY DIVISION 315 W PERSHING RD KANSAS CITY MO 64108-9998	816/374-9170
MILWAUKEE DIVISION 345 W ST PAUL AVE MILWAUKEE WI 53203-9998	414/291-2521

DIVISION	*TELEPHONE NO.*
TWIN CITIES DIVISION 100 FIRST ST MINNEAPOLIS MN 55401-9998	612/349-4992
NORTH SUBURBAN DIVISION 8999W PALMER ST NORTH SUBURBAN IL 60199-9998	313/451-5780
OMAHA DIVISION 1124 PACIFIC ST OMAHA NE 68108-9998	402/348-2550
SOUTH SUBURBAN DIVISION 6801 W 73RD ST SOUTH SUBURBAN IL 65499-99998	708/563-5564
ST LOUIS DIVISION 1720 MARKET ST ST. LOUIS MO 63155-9998	314/436-4505
WICHITA DIVISION 7117 W HARRY ST WICHITA KS 67276-9998	316/946-4615
EASTERN REGION	
BALTIMORE DIVISION 900 E FAYETTE ST BALTIMORE, MD 21233-9998	301/347-4516
CHARLESTON DIVISION 1002 LEE ST E CHARLESTON WV 25301-9998	304/357-4135
CINCINNATI DIVISION 1591 DALTON ST CINCINNATI OH 45234-9998	515/684-5489
CLEVELAND DIVISION 2400 ORANGE AVE CLEVELAND OH 441$1-9998	216/443-4076

DIVISION	*TELEPHONE NO.*
COLUMBIA DIVISION 1601 ASSEMBLY ST COLUMBIA SC 29201-9998	803/733-5900
COLUMBUS DIVISION 850 TWIN RIVERS DR COLUMBUS OH 43216-9998	614/469-4412
GREENSBORO DIVISION 900 E MARKET ST GREENSBORO NC 27420-9998	919/668-1208
HARRISBURG DIVISION 813 MARTIN LUTHER KING JR BLVD HARRISBURG PA 17105-9998	717/231-3700
LOUISVILLE DIVISION 1420 GARDINER LN LOUISVILLE KY 40231-9998	502/454-1788
NORTHERN VIRGINIA DIVISION 8409 LEE HIGHWAY MERRIFIELD VA 22081-9996	703/698-6519
PHILADELPHIA DIVISION 2970 MARKET ST PHILADELPHIA PA 19104-9998	215/895-8801
PITTSBURGH DIVISION 1001 CALIFORNIA AVE PITTSBURGH PA 15290-9998	412/359-7851
RICHMOND DIVISION 1801 BROOK RD RICHMOND VA 23232-9998	804/775-6137
SOUTH JERSEY DIVISION 421 BENIGNO BLVD BELLMAWR NJ 08031-9998	609/933-2910
SOUTHERN MARYLAND DIVISION 9201 EDGEWORTH DR CAPITOL HEIGHTS MD 20790-9998	301/499-7561

DIVISION	*TELEPHONE NO.*
NORTHEAST REGION	
ALBANY DIVISION 30 OLD KARNER RD ALBANY NY 12288-9998	518/456-1110
BOSTON DIVISION 25 DORCHESTER AVE BOSTON MA 02205-9998	617/654-5700
WESTERN NEW YORK DIVISION 1200 WILLIAM ST BUFFALO NY 14240-9998	716/846-2505
CARIBBEAN DIVISION GPO BOX 3367 SAN JUAN PR 00936-9998	809/753-4058
HARTFORD DIVISION 141 WESTON ST HARTFORD CT 06101-9998	203/524-6077
LONG ISLAND DIVISION P.O. BOX 8000 HICKSVILLE NY 11805-9998	516/755-2770
MANCHESTER DIVISION 955 GOFFS FALLS RD MANCHESTER NH 03103-9998	603/644-3816
NEWARK DIVISION 2 FEDERAL SQ NEWARK NJ 07102-9998	201/669-0770
NEW BRUNSWICK DIVISION 21 KILMER RD NEW BRUNSWICK NJ 08901-9998	201/819-3602
NEW YORK DIVISION JAMES A FARLEY BLDG NEW YORK NY 10199-9998	212/330-3070

DIVISION	*TELEPHONE NO.*
PROVIDENCE DIVISION 24 CORLISS ST PROVIDENCE RI 02904-9998	401/276-6958
QUEENS DIVISION 41-65 MAIN ST FLUSHING NY 11351-9998	718/631-0186
SPRINGFIELD DIVISION 1883 MAIN ST SPRINGFIELD MA 01101-9998	413/785-6504
WESTCHESTER DIVISION 230 E SANDFORD BLVD MOUNT VERNON NY 10551-9998	914/964-7258
SOUTHERN REGION	
ATLANTA DIVISION 3900 CROWN RD SW ATLANTA GA 30304-9998	404/765-7254
BIRMINGHAM DIVISION 351 24TH ST N BIRMINGHAM AL 35203-9998	205/521-0416
DALLAS DIVISION 401 DALLAS FT WORTH TPKE DALLAS TX 75260-9998	214/819-7151
HOUSTON DIVISION 401 FRANKLIN AVE HOUSTON TX 77201-9998	713/226-3713
JACKSON DIVISION 460 BRIARWOOD DR JACKSON MS 39206-9998	601/968-0505
JACKSONVILLE DIVISION 1100 KINGS RD JACKSONVILLE FL 32203-9998	904/359-2929

DIVISION	*TELEPHONE NO.*
LITTLE ROCK DIVISION 4700 E MC CAIN BLVD LITTLE ROCK AR 72231-9998	501/377-6402
MEMPHIS DIVISION 555 S THIRD ST MEMPHIS TN 38101-9998	901/521-2177
MIAMI DIVISION 2200 NW 72ND AVE MIAMI FL 33152-9998	305/470-0232
NASHVILLE DIVISION 525 ROYAL PARKWAY AVE NASHVILLE TN 37229-9996	615/885-9112
NEW ORLEANS DIVISION 701 LOYOLA AVE NEW ORLEANS LA 70113-9998	504/589-1117
OKLAHOMA CITY DIVISION 419 SW SIXTH ST OKLAHOMA CITY OK 73125-9998	405/278-6111
SAN ANTONIO DIVISION 10410 PERRIN-BEITEL RD SAN ANTONIO TX 78284-9998	512/657-8500
TAMPA DIVISION 5201 W SPRUCE ST TAMPA FL 33630-9998	813/877-0825
WESTERN REGION	
ANCHORAGE DIVISION 3720 BARROW ST ANCHORAGE AK 99599-9998	907/261-5401
HONOLULU DIVISION PO BOX 30888 HONOLULU HI 96820-0888	808/423-3717

DIVISION	*TELEPHONE NO.*
LONG BEACH DIVISION 2300 REDONDO AVE LONG BEACH CA 90809-9998	213/494-2388
LOS ANGELES DIVISION 900 E GAGE AVE LOS ANGELES CA 90052-9998	213/586-1475
OAKLAND DIVISION 1675 7TH ST OAKLAND CA 94615-9998	415/874-8293
PHOENIX DIVISION 4949 E VAN BUREN ST PHOENIX AZ 85026-9998	602/225-3100
PORTLAND DIVISION 715 NW HOYT ST PORTLAND OR 97208-9998	503/294-2305
SACRAMENTO DIVISION 2000 ROYAL OAKS DR SACRAMENTO CA 95813-9998	916/551-1813
SALT LAKE CITY DIVISION 1760 W 2100 S SALT LAKE CITY UT 84199-9998	801/974-2304
SAN DIEGO DIVISION 2535 MIDWAY DR SAN DIEGO CA 92199-9998	619/221-3326
SAN FRANCISCO DIVISION 1300 EVANS AVE SAN FRANCISCO CA 94188-9998	415/550-5726
SAN JOSE DIVISION 1750 LUNDY AVE SAN JOSE CA 95101-9998	408/723-6100

DIVISION	*TELEPHONE NO.*
SANTA ANA DIVISION 3101 W SUNFLOWER AVE SANTA ANA CA 92799-9996	714/662-6223
SEATTLE DIVISION 415 FIRST AVE N SEATTLE WA 98109-9998	206/442-6160
TUCSON DIVISION 1501 CHERRYBELL STRA TUCSON AZ 85726-9998	602/620-5064
VAN NUYS DIVISION 15701 SHERMAN WAY VAN NUYS CA 91409-9998	818/908-6960